



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2018-0829; FRL-9993-84-Region 1]

Air Plan Approval; Massachusetts; Nonattainment New Source Review Program Revisions; Infrastructure Provisions for National Ambient Air Quality Standards; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. On February 9, 2018, the Massachusetts Department of Environmental Protection (MassDEP) submitted revisions to the EPA satisfying the MassDEP's earlier commitment to adopt and submit provisions that meet certain requirements of the Nonattainment New Source Review (NNSR) air permit program regulations. The EPA is also approving the Commonwealth's NNSR certification, which was included in the February 9, 2018, SIP revision, as sufficient for the purposes of satisfying the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). In addition, this action converts the EPA's December 21, 2016, conditional approval for certain infrastructure provisions relating to Massachusetts's NNSR air permit program to full approval. This action is being taken under the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2018-0829. All documents in the docket are listed on the

<https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, Air Permits, Toxics, and Indoor Programs Branch, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Eric Wortman, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square – Suite 100 (Mail Code 05-2), Boston, MA 02109 - 3912, tel. (617) 918-1624, email wortman.eric@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On February 14, 2019, the EPA published a Notice of Proposed Rulemaking (NPRM) for the Commonwealth of Massachusetts. *See* 84 FR 4021. The NPRM proposed approval of several revisions to the Commonwealth's NNSR permit program to address the relevant issues identified in the EPA's December 21, 2016 conditional approval of the Commonwealth's infrastructure SIP for the 1997 ozone, 2008 lead, 2008 ozone, 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide NAAQS. As a result of the proposed approval of the NNSR permitting revisions, the EPA also proposed to convert the December 21, 2016 conditional approval to a full approval for Clean Air Act (CAA) section 110(a)(2)(D)(i)(II). In addition, the NPRM proposed to approve the Commonwealth's NNSR certification as sufficient for addressing the NNSR requirements for the 2008 ozone NAAQS for the Dukes County Nonattainment Area. The formal SIP revision was submitted by Massachusetts on February 9, 2018.

A. NNSR SIP Revisions and the EPA's December 21, 2016 Conditional Approval

On December 21, 2016, the EPA published a final conditional approval for Massachusetts's June 6, 2014 infrastructure SIP submittal for the 1997 ozone, 2008 lead (Pb), 2008 ozone, 2010 NO₂, and 2010 sulfur dioxide (SO₂) NAAQS. *See* 81 FR 93627. This rulemaking identified that a provision under section 110(a)(2)(D)(i)(II) of the CAA was not included in the Commonwealth's June 6, 2014 SIP submittal. Among other things, section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. The EPA sometimes refers to this requirement under subsection 110(a)(2)(D)(i)(II) as "prong 3." To address the conditional approval for prong 3, on February 9, 2018, the MassDEP submitted regulatory provisions for approval into the Commonwealth's SIP. As explained in the NPRM, the revisions addressed the NNSR requirements that would make the Commonwealth's NNSR program applicable to sources regardless of the attainment status of the

area where the source is located. These revisions were necessary because Massachusetts is located in the Ozone Transport Region (OTR).¹

B. NNSR Certification for 2008 Ozone NAAQS

Dukes County in Massachusetts was designated nonattainment for the 2008 8-hour ozone NAAQS on July 20, 2012 using 2009-2011 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, Dukes County was classified as a marginal nonattainment area. On March 6, 2015, the EPA issued a final rule entitled, “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements” (SIP Requirements Rule), which established the requirements that state, tribal, and local air quality management agencies must meet in developing implementation plans for areas where ozone concentrations exceed the 2008 8-hour ozone NAAQS.² *See* 80 FR 12264. Areas that were designated as marginal nonattainment areas for the 2008 8-hour ozone NAAQS were required to attain no later than July 20, 2015, based on 2012-2014 monitoring data. *See* 40 CFR 51.1103. The Dukes County nonattainment area attained the 2008 8-hour ozone NAAQS by July 20, 2015, and therefore on April 11, 2016, the EPA Administrator signed a final determination of attainment for the 2008 8-hour ozone standard for the Dukes County nonattainment area. *See* 81 FR 26697 (May 4, 2016).

Based on initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Massachusetts was required to develop a SIP revision addressing certain CAA requirements for the Dukes County nonattainment area, and

¹ CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards. Thus, NNSR permitting requirements apply statewide, even if the state is designated attainment for the ozone NAAQS.

² The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

submit to the EPA an NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (i.e., July 20, 2015).^{3,4} Because Massachusetts already has a NNSR program that applies statewide, Massachusetts can certify the adequacy of its existing NNSR program with respect to the 2008 ozone NAAQS for the Dukes County nonattainment area.⁵ See 40 CFR 51.1114.

On February 3, 2017, the EPA found that 15 states (including the Commonwealth of Massachusetts) and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the ozone transport region.⁶ See 82 FR 9158. MassDEP submitted its February 9, 2018 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160-165, as well as its obligations under the EPA's February 3, 2017 Findings of Failure to Submit.

³ Where an air agency determines that the provisions in or referred to by its existing EPA approved SIP are adequate with respect to a given infrastructure SIP element (or sub-element) even in light of the promulgation of a new or revised NAAQS, the air agency may make a SIP submission in the form of a certification. This type of infrastructure SIP submission may, e.g., take the form of a letter to the EPA from the Governor or her/his designee containing a "certification" (or declaration) that the already-approved SIP contains or references provisions that satisfy all or some of the requirements of section 110(a)(2), as applicable, for purposes of implementing the new or revised NAAQS.

⁴ Massachusetts's obligation to submit the NNSR Certification SIP was not affected by the D.C. Circuit Court's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist. v. EPA*.

⁵ Massachusetts's February 9, 2018 certification of adequacy that the SIP meets the NNSR requirements for the 2008 ozone NAAQS relies on the inclusion of the SIP revisions approved in this action.

⁶ States have three years after the effective date of designation for the 2008 8-hour ozone NAAQS to submit SIP revisions addressing NNSR for their nonattainment areas. See 40 CFR 51.1114. Massachusetts's SIP revision certified that its SIP-approved state regulation addressing nonattainment new source review for all new stationary sources and modified existing stationary sources in the Commonwealth exceeds the requirements of section 182(a)(2)(C) for the 2008 8-hour ozone NAAQS. However, EPA does not believe that the two-year deadline contained in CAA section 182(a)(2)(C) applies to NNSR SIP revisions for implementing the 8-hour ozone NAAQS. See 80 FR 12264, 12267 (March 6, 2015); 70 FR 71612, 71683 (November 29, 2005). The submission of NNSR SIPs due on November 15, 1992, satisfied the requirement for states to submit NNSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within two years after the date of enactment of the 1990 CAA Amendments. *Id.*

Other specific requirements of the Commonwealth's NNSR SIP revisions and NNSR certification, and the rationale for EPA's proposed action, are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

The EPA's review of MassDEP's February 9, 2018 SIP submittal indicates that the submittal satisfies the requirements of the CAA and is appropriate for inclusion into the SIP. The EPA therefore is approving the SIP revisions submitted by MassDEP. Also, as a result of our approval of the NNSR permitting revisions in this action, the EPA is converting the December 21, 2016 conditional approval to a full approval for prong 3 of CAA section 110(a)(2)(D)(i)(II). Other aspects of EPA's December 21, 2016 conditional approval will be addressed in other actions.

The EPA is also approving MassDEP's February 9, 2018 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Dukes County Nonattainment Area. The EPA has concluded that MassDEP's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under the EPA's February 3, 2017 Findings of Failure to Submit relating to submission of a NNSR certification.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Massachusetts's 310 CMR 7.00: Appendix A as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of

this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁷

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

⁷ 62 FR 27968 (May 22, 1997).

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: May 19, 2019.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W – Massachusetts

§ 52.1119 [Amended]

2. Section 52.1119 is amended by removing and reserving paragraph (a)(4).

3. Section 52.1120 is amended:

a. In the table in paragraph (c), by revising the entry for “310 CMR 7.00, Appendix A”; and

b. In the table in paragraph (e), by adding entries for “Infrastructure SIP for the 1997 Ozone NAAQS”, “Infrastructure SIP for the 2008 Lead NAAQS”, “Infrastructure SIP for the 2008 Ozone NAAQS”, “Infrastructure SIP for the 2010 NO₂ NAAQS”, and “Infrastructure SIP for the 2010 SO₂ NAAQS” at the end of the table.

The revision and additions read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

EPA Approved Massachusetts Regulations

| State citation | Title/subject | State effective date | EPA approval date ¹ | Explanations |
|--------------------------|---|-----------------------------|--|---|
| ** | * | * | * | ** |
| 310 CMR 7.00, Appendix A | Emission Offsets and Nonattainment Review | October 22, 1999 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Approves revisions for consistency with underlying federal regulations that make the Commonwealth’s SIP-approved NNSR program applicable to certain sources of NO _x and VOC statewide. |

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¹ To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

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Massachusetts Non Regulatory

| Name of non regulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approved date ³ | Explanations |
|---|---|-------------------------------------|--|---|
| ** | * | * | * | ** |
| Infrastructure SIP for 1997 Ozone NAAQS | Statewide | February 9, 2018 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Certain aspects relating to PSD for prong 3 of CAA section 110(a)(2)(D)(i)(II) which were conditionally approved on December 21, 2016 are now fully approved. |
| Infrastructure SIP for 2008 Lead NAAQS | Statewide | February 9, 2018 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Certain aspects relating to PSD for prong 3 of CAA section 110(a)(2)(D)(i)(II) which were conditionally approved on December 21, 2016 are now fully approved. |
| Infrastructure SIP for 2008 Ozone NAAQS | Statewide | February 9, 2018 | [Insert date of publication in the Federal Register] [Insert Federal Register citation] | Certain aspects relating to PSD for prong 3 of CAA section 110(a)(2)(D)(i)(II) which were conditionally approved on December 21, 2016 are now fully approved. |

| | | | | |
|--|-----------|------------------|--|---|
| Infrastructure SIP for 2010 NO ₂ NAAQS | Statewide | February 9, 2018 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Certain aspects relating to PSD for prong 3 of CAA section 110(a)(2)(D)(i)(II) which were conditionally approved on December 21, 2016 are now fully approved. |
| Infrastructure SIP for 2010 SO ₂ NAAQS | Statewide | February 9, 2018 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | Certain aspects relating to PSD for prong 3 of CAA section 110(a)(2)(D)(i)(II) which were conditionally approved on December 21, 2016 are now fully approved. |

³ To determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2019-10875 Filed: 5/28/2019 8:45 am; Publication Date: 5/29/2019]